

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

USVIS CORTEZ GRAYSON,

Defendant-Appellee.

UNPUBLISHED

October 31, 2006

No. 263512

Saginaw Circuit Court

LC No. 04-024852-FC

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

A jury convicted defendant Usvis Cortez Grayson of armed robbery,¹ carrying a concealed weapon (CCW),² felon in possession of a firearm,³ and possession of a firearm during the commission of a felony (felony-firearm).⁴ The trial court sentenced Grayson as a second habitual offender⁵ to serve concurrent prison terms of 108 months to 162 months for armed robbery, and 30 months to 90 months for both CCW and felon in possession of a firearm. The trial court also sentenced Grayson to the mandatory two years' imprisonment for felony-firearm, with this sentence running concurrent with that imposed for CCW and consecutive to the sentences imposed for armed robbery and felon in possession of a firearm. Grayson appeals as of right. We affirm. We decide this appeal without oral argument.⁶

¹ MCL 750.529.

² MCL 750.227.

³ MCL 750.224f.

⁴ MCL 750.227b.

⁵ MCL 769.10.

⁶ MCR 7.214(E).

I. Basic Facts And Procedural History

At 8:30 p.m. on July 23, 2004, the complainant Maurice Loyd was returning to work at the Delphi Chassis plant in Saginaw and stopped at the T&M Party Store at 3615 Webber near Genesee to buy a lottery ticket. Shortly after Loyd arrived, a Chevrolet Blazer pulled into the lot and parked. Codefendant Rodney Brandon, the driver of the Blazer, got out of the car and began looking down Webber as he walked toward the street. Grayson, the passenger of the Blazer, got out and walked toward the store with his hands inverted and hanging against his sides. As Loyd began to reach out to open the door of the store for Grayson, Grayson produced a semiautomatic pistol in each hand and told Loyd to empty his pockets.

Saginaw police officers were dispatched to the party store on an armed robbery call, and Loyd gave them a description of the suspects and two possible license plate numbers. A LEIN check revealed that one of the license plate numbers was assigned to a Chevrolet vehicle registered to Brandon. The vehicle information was then broadcast to police cars in Saginaw County, and Buena Vista Township police officers located the vehicle just a short distance southeast of the party store. Officers arrested Brandon and Grayson, searched the vehicle, and recovered two handguns and Loyd's cell phone.

Detective Joseph Grigg testified that inmates at the Saginaw County jail are given unique personal identification numbers (PIN) to make outgoing calls. The PIN and the call are recorded on a computer, and inmates are notified at the beginning of each call that the system is being recorded or listened in on. Detective Grigg acknowledged that in the past, some inmates have used another inmates' PIN numbers when making telephone calls.

Detective Grigg made a CD of Brandon's calls, focusing on calls made the day after the robbery. The recorded conversations included references to the release of the Blazer, an acknowledgment of ownership of one of the weapons, and references to whose fingerprints would be found on the weapons. Detective Grigg testified that he was not a voice identification expert, but, based on his own conversations with Brandon, he recognized the voice as being his. Detective Grigg also testified that the caller identified himself as "Tay," which he believed was a nickname for Brandon's middle name, Octavius. Brandon's counsel objected to the admission of the telephone conversations based on authentication, but the trial court admitted them based on Detective Grigg's testimony.

II. Admissibility Of Evidence

A. Standard of Review

Grayson argues that the trial court erred in admitting the telephone conversations between Brandon and others into evidence because the conversations were not properly authenticated as required by MRE 901. Whether evidence is properly authenticated is a matter within the sound discretion of the trial court.⁷ "This Court will find an abuse of discretion only if an unprejudiced

⁷ *People v Ford*, 262 Mich App 443, 460; 687 NW2d 119 (2004).

person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made.”⁸

B. Authentication Under MRE 901

MRE 901(a) provides that “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” MRE 901(b)(5) provides, by way of illustration and not limitation, that voice identification may be authenticated by “[i]dentification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.”

Grayson argues that the primary circumstance identifying Brandon on the recordings was Brandon’s PIN number, which was associated with the calls. Grayson notes that Detective Grigg’s testimony acknowledged that inmates sometimes used another inmate’s PIN. However, Detective Grigg also stated that he had spoken with Brandon and recognized the recorded voice as belonging to Brandon, and he opined that the caller’s use of the nickname “Tay” referred to Brandon’s middle name (Octavius). “[A] tape ordinarily may be authenticated by having a knowledgeable witness identify the voices on the tape.”⁹ Any discrepancy in the testimony regarding the caller’s identification is a controverted question of fact for the jury.¹⁰ Thus, the trial court did not abuse its discretion in admitting the telephone recordings.

We further note that the trial court carefully instructed the jury that the recordings were only admitted as substantive evidence against Brandon. Indeed, the trial court specifically instructed that the recording could not be used against Grayson. And “[j]urors are presumed to follow their instructions”¹¹

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette

⁸ *Id.*

⁹ *People v Berkey*, 437 Mich 40, 50; 467 NW2d 6 (1991).

¹⁰ See *People v Kochan*, 55 Mich App 326, 331; 222 NW2d 317 (1974).

¹¹ *People v Bauder*, 269 Mich App 174, 190; 712 NW2d 506 (2005), quoting *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003) (alteration by *Bauder* Court).